XIII

BENGAL SECRETARIAT

REPORT

OF THE

LEGAL REMEMBRANCERS,

NORTH-WESTERN PROVINCES,

FOR THE YEAR 1869-70.

ALLAHABAD:

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1870.

GOVERNMENT 1871 N.W.P.

REPORT

OF THE

LEGAL REMEMBRANCERS,

NORTH-WESTERN PROVINCES,

FOR 1869-70.

No. 918 OF 1870.

FROM

F. HENVEY, ESQUIRE,

Offg. Secretary, Board of Revenue,
North-Western Provinces,

To

C. A. ELLIOTT, ESQUIRE,

Offg. Secretary to Government,
North-Western Provinces.

DATED ALLAHABAD, THE 17 AUGUST, 1870.

SIR,

REVENUE DEPT.
Present.
J. F. D. INGLIS, ESQ., and H. S. REID, ESQ.

I AM directed to submit the Legal Remembrancers' Report for the year ending 31st March, 1870.

2. The divisional returns* were received on the following dates :—

Meerut	May 16th.
Rohilkhund	June 7th.
Agra	June 15th.
Allahabad	July 12th.
Benares	May 18th.

Thus the latest return was that from Allahabad. The statements are very simple, and there is no reason why the Annual Report should be so frequently delayed for want of accurate or punctual divisional returns.

3. I am here to remark that the late Commissioner of Benares, who was censured in paragraph 4 of the Report for 1869, attributed the delay to neglect in the office of the Collector of Mirzapore. The Board have already, in their letter No. 1367, dated 10th December, 1869, to Government, expressed satisfaction at being able to exculpate the Commissioner, and it has since been ascertained that the late Manager of the Kuntit Estate was responsible for the delay which took place.

4. There has been a still further decrease of litigation. The total number of cases in which Government was concerned amounted to only 218, compared with 279 in the preceding year; of the 218 suits Government was plaintiff or appellant in 78, and defendant or respondent in 140. For 1869 the figures were 104 and 175 respectively. The decrease is, therefore, visible in both classes of suits. The Board wish that they could ascribe this result altogether to more cautious action on the part of local officers; but, unfortunately, figures noted hereafter point, in some instances at least, to an opposite conclusion.

5. The following Statements, A., B. and C., give information for the year in the usual form. It may be necessary here to remark that the figures in Statement A. showing the cases "pending at the close of last year," both under the heading Government Plaintiff and Government Defendant, do not exactly correspond with the figures in Statement A. of 1868-69 for cases pending at the end of that year. The entries in the statement now submitted have, however, been carefully compared with the last annual returns, and are believed to be accurate.

* Those for Ajmere, Jhansie and Kumaon were blank.

A.

Civil Suits in which Government was concerned during the Year 1869-70, *from* 1*st April*, 1869, *to* 31*st March*, 1870.

Description of Litigation.	Government Plaintiff Suits.								Government Defendant Suits.													
	Pending at the close of last year.	Instituted during the year.	Total.	Decided. For Government.	Decided. Against Government.	Pending.	Percentage on Cases Decided. For Government.	Percentage on Cases Decided. Against Government.	Pending at the close of last year.	Instituted during the year.	Total.	Decided. For Government.	Decided. Against Government.	Pending.	Percentage on Cases Decided. For Government.	Percentage on Cases Decided. Against Government.	Grand Total.	Total Cases Decided.	Decided in favour of Government.	Decided against Government.	Percentage for Government.	Percentage against Government.
Original Suits	4	16	20	12	3	5	80	20	20	61	81	37	30	14	55	45	101	82	49	33	59	41
Appeals, Regular	4	8	12	3	5	4	37	63	1	24	25	12	3	10	80	20	37	23	15	8	65	35
Ditto, Special	...	5	5	4	1	...	80	20	3	3	6	3	1	2	75	25	11	9	7	2	77	23
Applications	10	31	41	24	6	11	80	20	6	22	28	4	16	8	20	80	69	50	28	22	56	44
Total ...	18	60	78	43	15	20	74	26	30	110	140	56	50	34	52	48	218	164	99	65	60	40
Contract	1	6	7	3	...	4	100	..	1	7	8	6	1	1	85	15	15	10	9	1	90	10
Exchequer	...	3	3	2	...	1	100	...	1	10	11	8	2	1	80	20	14	2	10	2	80	20
Damages	...	...	...	...	...	...	..	...	1	7	8	3	3	2	50	50	8	6	3	3	50	50
Confiscation	2	4	6	1	3	2	40	60	3	12	15	5	2	8	71	29	21	11	6	5	54	46
Wards	...	6	6	4	...	2	100	...	2	19	21	6	10	5	37	63	27	20	10	10	50	50
Crown Lands and Escheats	4	8	12	7	5	...	58	42	10	16	26	15	9	2	62	38	38	36	22	14	61	39
To set aside Orders	...	1	1	...	1	...	...	100	6	19	25	12	5	8	70	30	26	18	12	6	66	34
Trespass	...	...	...	...	...	...	...	...	...	1	1	...	1	...	...	100	1	1	...	1	...	100
Trover	...	...	...	...	...	...	...	...	1	...	1	...	1	...	...	100	1	1	...	1	...	100
Wages	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	..	...	...
Costs	11	32	43	26	6	11	81	19	5	19	24	1	16	7	5	95	67	49	27	22	55	45
Total ...	18	60	78	43	15	20	74	26	20	110	140	56	50	34	52	48	218	164	99	65	60	40

B.

Statement shewing the Nature of the Suits in which Government was concerned in the several Divisions of the North-Western Provinces.

		Contract.			Exchequer.			Damages.			Confiscations.			Wards' Estates.			Crown Lands and Escheats.			To set aside Orders.			Trespass.			Trover.			Wages.			Costs.			Total.		
		Decided for Government.	Decided against Government.	Pending.	Decided for Government.	Decided against Government.	Pending.	Decided for Government.	Decided against Government.	Pending.	Decided for Government.	Decided against Government.	Pending.	Decided for Government.	Decided against Government.	Pending.	Decided for Government.	Decided against Government.	Pending.	Decided for Government.	Decided against Government.	Pending.	Decided for Government.	Decided against Government.	Pending.	Decided for Government.	Decided against Government.	Pending.	Decided for Government.	Decided against Government.	Pending.	Decided for Government.	Decided against Government.	Pending.	Decided for Government.	Decided against Government.	Pending.
Meerut ...	Government Plaintiff ...	2	...	..	...	...	...	...	...	...	...	...	1	...	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	9	...	3	11	1	4
	" Defendant ...	1	...	...	...	...	...	1	2	...	2	...	1	1	3	1	6	4	1	5	3	5	...	1	...	...	...	...	...	...	...	6	3	16	19	11
Rohilkhund	" Plaintiff ...	1	...		...	...	...	...	...	...	1	3	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	5	3	2	7	6	3
	" Defendant ...	2	...	...	4	1	..	...	...	...	1	2	6	1	...	1	...	...	...	...	...	1	...	...	...	...	...	...	...	...	1	9	4	9	13	12
Agra ...	" Plaintiff ...	...	...	3	...	...	...	...	...	...	...	...	...	...	...	...	7	4	...	...	1	...	...	...	...	...	...	...	...	...	1	...	2	8	5	5
	" Defendant ...	2	1	...	1	...	...	...	1	...	...	...	...	...	...	...	4	2	1	3	2	2	...	...	...	...	...	...	...	...	...	1	...	10	7	3
Allahabad ...	" Plaintiff ...	...	...	1	1	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	1	2	...	3
	" Defendant ...	...	...	...	2	1	1	2	...	2	...	...	...	...	...	1	3	2	...	3	...	...	...	...	...	...	...	...	...	...	...	...	...	10	3	4
Benares ...	" Plaintiff ...	...	...	...	1	...	...	...	...	...	...	...	...	4	...	2	...	...	...	...	...	...	...	...	...	...	...	...	...	...	10	3	3	15	3	5
	" Defendant ...	1	...	1	1	...	...	...	...	...	2	...	1	4	7	2	2	1	...	1	...	...	...	...	...	...	1	...	...	...	...	...	...	11	9	4
	Total ...	9	1	5	10	2	2	3	3	2	6	5	10	10	10	7	22	14	2	12	6	8	...	1	...	...	1	...	...	...	...	27	22	18	99	65	54

C.

Statement shewing the Percentage of Decisions For and Against Government on the Total Cases Decided during the Past Five Years.

All Divisions.	1869-70.		1868-69.		1867-68.		1866 67.		1865 66.	
	Percentage of Decisions in favour of Government.	Percentage of Decisions against Government.	Percentage of Decisions in favour of Government.	Percentage of Decisions against Government.	Percentage of Decisions in favour of Government.	Percentage of Decisions against Government.	Percentage of Decisions in favour of Government.	Percentage of Decisions against Government.	Percentage of Decisions in favour of Government.	Percentage of Decisions against Government.
Original Suits	59	41	79	21	70	30	74	26	58	42
Appeals, Regular	65	35	44	56	59	41	41	59	76	24
Appeals, Special	77	33	86	14	60	40	64	36	100	...
Miscellaneous Applications	56	44	56	44	55	45	87	13	85	15
Total ...	60	40	65	35	61	39	65	35	76	24
Government Plaintiff Suits.										
Original Suits	80	20	84	16	84	16	94	6	78	22
Appeals, Regular	37	63	35	65	33	67	6	94	46	54
Appeals, Special	80	20	80	20	...	100	...	100	100	...
Miscellaneous Applications	80	20	93	7	94	6	92	8	90	10
Total ...	74	26	77	23	77	23	51	49	79	21
Government Defendant Suits.										
Original Suits	55	45	77	23	67	33	71	29	77	23
Appeals, Regular	80	20	48	52	66	34	74	26	67	33
Appeals, Special	75	25	89	11	100	...	82	18	...	100
Miscellaneous Applications	20	80	18	82	3	97	60	40	77	23
Total ...	52	48	58	42	56	44	72	28	73	27

6. The first noticeable point is that, on the whole, litigation has not been favourable to Government in comparison with the returns of previous years. One hundred and sixty-four cases were decided; Government was successful in 99, and unsuccessful in 65; of the 65 cases Government was engaged as plaintiff in 15, and as defendant in 50. The percentages on the total number are 60 for Government and 40 against; in "Government Plaintiff" suits 74 for and 26 against; in "Government Defendant" suits 52 for and 48 against. The figures shew a falling off in each class and in the total compared with the results of 1868-69, and the percentages 60 for and 40 against are more unfavourable than they were during the preceding four years, the next lowest being those of 1867-68 – *viz.*, 61 for and 39 against.

7. The following table gives, in an abstract form, the results for each division :—

D.

Abstract of Litigation in Decided Cases by Divisions, 1869-70.

Divisions.	*Government Plaintiff.*					*Government Defendant.*					*Total.*				
	Cases decided.	For.	Against.	Percentage for.	Percentage against.	Cases decided.	For.	Against.	Percentage for.	Percentage against.	Cases decided.	For.	Against.	Percentage for.	Percentage against.
Meerut	12	11	1	91	9	35	16	19	45	55	47	27	20	57	43
Rohilkhund	13	7	6	53	47	21	9	12	42	58	34	16	18	47	53
Agra	13	8	5	61	39	17	10	7	58	42	30	18	12	60	40
Allahabad	2	2	...	100	...	13	10	3	76	24	15	12	3	80	20
Benares	18	15	3	83	17	20	11	9	55	45	38	26	12	68	32
Total ...	58	43	15	74	26	106	56	50	52	48	164	99	65	60	40

From this it will be clearly seen to what divisions failure must be traced. In Allahabad, where the cases are few, the result is very satisfactory. Benares stands second in the number of cases decided, and the percentages are favourable, excepting "Government Defendant" suits, where the issue was successful in only 11 out of 20, or in 55 per cent. Agra, on the other hand, is low; while in Meerut and Rohilkhund the failure is conspicuous, the result of "Government Defendant" suits being unsuccessful in both divisions, and Rohilkhund exhibiting by far the lowest percentages under the heading "Government Plaintiff" suits and in the totals. It is in these two divisions, therefore, Meerut and Rohilkhund, that some explanation of the generally unsatisfactory returns must be looked for.

8. Statement B. shews that the unsuccessful suits in Meerut and Rohilkhund were distributed as follows :—

MEERUT.

Damages	2
Wards	3
Crown Lands and Escheats	5
To set aside Orders	3
Trespass	1
Costs	6
Total ...	20

ROHILKHUND.

Exchequer	1
Confiscation	5
Costs	12
Total ...	18

Thus, out of 38 in both divisions, 18 were connected with costs,—that is for the most part applications for execution of decrees against Government. On previous occasions the Board have pointed out the impropriety of permitting such applications to be lodged through neglect to pay promptly the sums decreed. In three of the five divisions the Board's instructions have borne fruit; for in Agra and Allahabad there were no applications instituted against Government, and in Benares there was only one case, and that not connected with the execution of a decree. The attention of the Commissioners of Meerut and Rohilkhund will again be directed to this point.

9. Five suits relating to Crown Lands and Escheats were decided against Government in Meerut. These generally have reference to the claims of the State upon plots of nuzzool ground. There are seldom any important points of law involved, and for the facts the Board are compelled to trust to local officers. That the issue should have been so unfavourable implies a want of caution on the part of Collectors.

Three suits to set aside the orders of the Executive were decided against Government in the same division. This is another unfavourable symptom, which should have the Commissioner's attention.

10. In Rohilkhund, as has before been remarked, the return of applications or suits relating to costs is bad. They amounted to 12 decided against Government. Of the remaining six, five were to contest orders of confiscation passed after the mutiny. Several of the cases will be mentioned at length hereafter. Litigation is still going on at Bareilly. It is necessary that the position of Government should be defended. The uncertainty as to the exact scope of the orders directing the confiscation of the village of Mukrundpore is the principal cause of failure.

11. Another point in the table given at paragraph 7, which should attract attention, is the heavy percentage of unsuccessful suits of the "Government Defendant" class in the Benares Division, where the general percentages are good. Seven out of the nine cases were connected with Wards' estates; and the failure is attributable to the extremely embarrassed circumstances of the Soonwance jagheerdars, whose property has lately been entrusted to the Court of Wards. The Board have been compelled to confess judgment in a considerable number of suits for petty debts contracted before the transfer took place.

12. Turning now to Statement A. and comparing it with the same statement for the preceding year, it will be observed that regular appeals by Government have decreased in number from 18 to 12. The percentage of favourable decisions is not much better than it was last year. Special appeals maintain a very satisfactory proportion—80 for and 20 against. Again, if the "Government Defendant" suits be looked at, it will be seen that, of 15 regular appeals decided, in 12 the judgments of the Lower Courts were maintained, and the result of the special appeals is nearly as good. The conclusion to be gathered from the above seems to be that the decisions of the Courts of first instance are satisfactory on the whole; but there is a tendency both on the part of Government Officers and other litigants to rush too readily into appeals. With special appeals, on the other hand, Government have the important advantage of skilled European advice, and the result is that but few such appeals are lodged, and the greater part of those instituted are successful.

13. In the classification of suits there is much variety between the returns of this and the preceding year. There has been a marked diminution in cases relating to Crown Lands and Escheats, the numbers being 38 and 64 respectively. Confiscation cases have fallen from 45 to 21; "Contract" from 39 to 15. On the other hand, the number under "Costs" has risen from 65 to 67; under "Exchequer," from 6 to 14; "Wards," from 25 to 27; "Damages," from 1 to 8; Suits to contest Orders, from 21

to 26. The last is an increase which must be viewed with disapproval. It is true that the percentage in favour of Government is fair, though it is less favourable than it was in 1868-69; but it is not satisfactory that a much larger proportion of the total number of suits should be brought to contest orders which ought to be so unassailable, that this kind of case should form one of the least instead of the most numerous in the classification. Leaving "Costs" out of consideration, it appears that the most fruitful source of litigation is nuzzool property (Crown Lands, &c.,), 38; next come Estates under the Court of Wards, 27; next, Orders of the Executive, 26; then "Confiscations," 21. The rights of Government were oftenest asserted in cases relating to Crown Lands, 12; next in contracts, 7; third, in suits relating to wards' estates and confiscations, each 6. Government was oftenest opposed in cases relating to Crown Lands, &c., 26; next in suits to set aside orders, 25; third in wards' cases, 21. The result was most favourable under contracts, exchequer, and suits to set aside orders, in which the percentages for Government were 90, 80 and 66 respectively; and it was least favourable (where the cases are sufficiently numerous for comparison) in actions for damages and suits connected with wards' estates, *viz.*, 50 per cent. for and against.

14. Looking now at the distribution of suits by divisions, according to the nature of the claim, we find the following figures:—

E.

Abstract of the Number and Class of Cases under Trial in each of the Divisions of the North-Western Provinces during 1869-70.

Divisions.	Contract.	Exchequer.	Damages.	Confiscation.	Wards.	Crown Lands and Escheats.	To set aside Orders	Trespass.	Trover.	Wages.	Costs.
Meerut ...	3	1	3	4	5	12	13	1	...	...	21
Rohilkhund ...	3	5	...	14	2	...	1	...	...	...	24
Agra ...	...	1	1	...	...	13	8	...	...	...	4
Allahabad ...	6	3	4	...	1	5	3	...	...	...	2
Benares ...	1	2	...	3	19	3	1	...	1	...	16
Total ...	13	12	8	21	27	38	26	1	1	...	67

This statement shews that the principal classes of suits are very broadly marked out in the different divisions. Meerut, Rohilkhund and Benares are conspicuous for high figures under "costs"; but the applications in Benares were *all* on the part of Government. Rohilkhund is chiefly concerned with confiscation suits; Agra with litigation on the subject of Crown Lands and escheats; Benares with wards' estates; and Meerut with suits to contest orders. With the exception of the last point, the results were very similar in the preceding year.

15. The next statement exhibits the cost of litigation in the year under report and in 1868-69:—

F.

Comparative Statement shewing the Cost of Litigation during 1869-70.

Divisions.	Year.	Costs incurred by Government.	Awarded. For Government.	Awarded. Against Government.	Recovered.	Remitted.	Balance.	Costs claimable by Government for past years.	Amount recovered during the year under report.	Amount remitted.
		Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.
Meerut	1869-70 ...	2,445 15 11	919 0 3	534 1 5	471 6 9	...	447 9 6	1,629 1 2	362 4 2	...
	1868-69 ...	904 7 7	714 11 1	120 0 0	332 14 9	...	581 12 4	4,982 11 0	3,578 8 9	...
Rohilkhund	1869-70 ...	5,739 9 7	3,182 4 7	2,604 0 0	420 4 9	...	2,761 15 10	3,040 12 7	2,475 6 6	...
	1868 69 ...	11,175 6 2	2,945 11 10	4,488 1 10	296 8 6	...	2,649 3 4	5,131 11 10	110 9 7	4,629 9 0
Agra	1869-70 ...	1,860 15 3	520 12 1	1,165 2 2	7 4 0	...	518 8 1	1,032 3 4	195 6 1	...
	1868-69 ...	6,031 2 6	593 3 10	4,760 10 1	68 14 6	...	524 5 4	507 14 0	...	...
Allahabad	1869-70 ...	808 5 9	1,867 7 4	116 9 0	784 8 4	...	1,082 15 9	288 13 0	2 10 0	257 13 6
	18 8-69 ...	1,179 5 8	445 6 5	1,140 2 9	418 12 11	...	26 9 6	1,518 2 11	50 5 3	1,205 10 2
Benares	1869-70 ..	1,291 12 11	819 11 8	415 15 3	687 2 11	...	132 8 9	3,135 4 1	1,892 11 6	8 13 0
	1868-69 ...	3,698 9 6	3,048 14 6	680 0 1	1,733 14 3	...	1,315 0 3	2,269 7 1	281 4 3	169 15 0
Total	1869 70 ...	12,66 11 5	7,309 3 11	4,835 11 10	2,370 10 9	...	4,938 9 2	9,126 2 2	4,929 6 3	266 10 6
	1868-69 ...	22,938 15 5	7,747 15 8	11,188 14 9	2,851 0 11	...	4,896 14 0	14,409 14 10	4,020 11 10	6,005 2 2

It has been prepared so as to shew not only the costs incurred, awarded, and recovered as in previous reports, but those awarded for and against Government, and those claimable for past years, with the sums recovered on their account. It will be observed that litigation in Rohilkhund is still the most expensive to Government. The proportion of costs awarded against Government is heavy, while the amount recovered during the year is insignificant. Allahabad, as might be expected from the favourable issue of its litigation, is the most economical division, the sum recovered having approached very closely to the costs incurred. Recoveries generally seem to be slow; but the figures in the last two columns of Statement F. prove that exertions have been made to realize old claims, except where remission was thought necessary.

16. I am now directed to submit notes of some of the most important or interesting suits of the year.

Zuhoor-ood-deen *versus* Government.

17. This important case has been decided in favour of the appellant by the Privy Council. The circumstances which gave rise to the litigation were sufficiently described in a former report (paragraphs 45 to 51 of Mr. Batten's letter No. 386, dated 11th June, 1864). The file of the Privy Council case has been so recently laid before His Honor the Lieutenant-Governor, that it is only necessary to remark that, by the judgment of the Council, the title-deeds granted to the Pindara Chief are held to have conveyed the whole of the Talooka Gunoshpore, including the land to which appellant laid claim, and the demand on the part of Government of revenue exceeding the *istumraree jumma* previously fixed upon the Talooka has been pronounced untenable.

Syud Mahomed Kyoom *versus* Collector of Bareilly.

Oulla Begum *versus* the same.

Collector of Bareilly *versus* Luchmun Doss.

Nijabut Ally *versus* Collector of Bareilly.

18. The four suits here noted are all connected with the village of Mukrundpore, which was confiscated in 1858 for the rebellion of the Syud inhabitants.

19. The contention on the part of the local authorities has been that the order of confiscation applied to the whole village, whether inhabited sites or cultivated ground, and that no action could now be brought for re-entry upon the confiscated property, such suits being absolutely barred by the special limitation provisions of Section 20, Act IX., 1859. The Civil Courts, on the other hand, have held generally that the order of confiscation applied to the zemindaree rights of the then existing shareholders, and that, to plead the special limitation of Act IX. of 1859 in respect to the inhabited sites, it was incumbent upon Government to shew that possession had actually been taken in pursuance of an order of confiscation. Of the four suits, the first, Syud Mahomed Kyoom *versus* Collector of Bareilly, is the leading one. It was briefly noticed in paragraph 28 of the Legal Remembrancers' Report for 1868-69, and a perusal of the extract quoted in that paragraph will shew that the case was remanded by the High Court for re-trial upon the principle noted above, that is with reference to the actual seizure of the land in pursuance of an order of confiscation and without reference to the question whether the land was confiscated or not, or whether the proprietor was a rebel or not. On remand the decision of the Court of first instance was again unfavourable to Government. Again an appeal was preferred to the Judge of Bareilly and dismissed. The Board then sanctioned a special appeal to the High Court, and the result was partly in favour of Government. The judgment is important, as affecting a large number of similar suits which have been and are now being instituted to contest the orders of confiscation in this village. It is transcribed at length below :—

"The plaintiff's suit relates to two separate pieces of land. One is the site of his former house, which was knocked down by the British troops in May, 1858. It is situated in that part of Mouzah Mukrundpore which has been included in the city of Bareilly, and forms the Mohulla Mukrundpore, *alias* Nowmehla, and is stated to

measure 1,800 yards, and is defined by certain specified boundaries. The plaintiff claims possession of this land, and Rs. 390 compensation for the materials of the aforesaid house, in virtue of an award, dated 9th February, 1861. The other piece is a share in 24 acres of tank land (called Talab Bara Sahib), described as similarly situated in Nowmehla, but admitted before us to be in Mouzah Mukrundpore, just outside the Nowmehla. The share is stated to be 7 out of 24 sahans, and therefore equals 7 acres. No specific lands are claimed, but possession of 7 acres is claimed. In what way the site of the old house has been appropriated by the Government is not apparent from the plaint, which complains especially of the non-payment of the compensation awarded. The tank land appears to have been more or less disposed of by the Government to other parties, or used by itself, for a choongee house is said to have been built on one portion of it, while another portion was sold to a Mission. The defence originally filed on the part of the Government was defective. It alleged that the sites of the buildings constituting the plaintiff's house were confiscated land, and was silent about the tank land; but, in fact, it is contended that the tank land also is confiscated land. The Lower Courts having decreed the claim, the case came before this Court in special appeal on the 4th August, 1868, when it was ruled that the claim to the sum of Rs. 390, not having been brought within 6 years, could not be entertained under Clause 16, Section 1, Act XIV. of 1859. This ruling seems to have been the result of some misconception or miscalculation, as the suit was instituted on 4th September, 1866, within 6 years from the date of the award before mentioned. It was observed that the Lower Courts had not altogether dealt with the plea of limitation urged for the defence, in reference to the provisions of Section 20, Act IX. of 1859, in respect of the lands in suit in a satisfactory manner; and that the question to be determined was, not whether the land in question was ordered to be confiscated or not, nor whether it belonged to the plaintiff or to the rebel, Meean Jan, but whether it was taken into the possession of the Government in virtue or under colour of any order of confiscation; or whether, irrespectively of such order, the Collector wrongfully took possession of it. It was added that if it should appear to have been seized in pursuance of any order of confiscation, the finding that it belongs to the plaintiff, and was not included in the confiscation order, would not save the suit from being barred by the provisions of Section 20, Act IX. of 1859. The Lower Courts have now held, whether their reasons for so holding be sound or pertinent or not, that the lands were not seized in pursuance of any order of confiscation, and have again adjudged them to the plaintiff.

"The case has been again fully discussed and considered on the hearing of this second special appeal on the part of the Government.

"It appears that Meean Jan was but one of many sharers in Mouzah Mukrundpore, and that his share was legally confiscated by a sentence passed upon him in 1859. It appears, however, that in May, 1858, the Collector ordered the Tehseeldar to attach or to confiscate the zemindaree rights in the mouzah. The legality of the order is open to the greatest doubt. It is clear that the order extended only to the rights and interests of the zemindars, and was not intended to affect the rights and interests of the plaintiff, who was not one of the zemindars. The order could only affect the plaintiff, in connection with the present suit, if the land in question were shewn to belong to the zemindars; but the Lower Courts find this not to be the case. We must accept the finding that the lands belong to the plaintiff. It only remains to decide whether they were seized in virtue of the order of May, 1858.

"Now, as regards the land which was the site of the house, we cannot find that any seizure of it has at any time been made by the Government. The demolition of the house was certainly not in consequence of the alleged order, for it preceded it; and, since the act of the troops, no action on the part of the Government in respect of this land is brought to our notice, amounting to an attachment or seizure of it. On the contrary, the circumstance alleged by the plaintiff, whose allegation is not denied, that the Government at one time proposed to give him the confiscated bâgh of the

rebel, Ajoodhia, in lieu of this site, shows that it was regarded as his property, and not as belonging to the Government by forfeiture. It is true that the plaintiff sues for possession of it as though it were in the possession of the Government; but what is sought may be a declaration of his right to it; and the contention of the Government in this suit is an indication that he would not be allowed deal with it as his own. The suit is, therefore, justified; and the decree of the Lower Courts in respect of this piece of land is affirmed.

"As the claim to the sum awarded as compensation for the materials of the house was settled by the award of 9th February, 1861, and the suit is within the time allowed by the Law for the enforcement of the award, we are of opinion that the plaintiff is entitled to a decree for this portion of the claim, in conformity with the original decision of the Lower Courts, and in amendment of this Court's order of the 4th August, 1868. The case having been remanded under Section 351 of the Procedure Code, and being therefore wholly before the Court, we conceive ourselves at liberty to correct the error in that order.

"As regards the tank land, we cannot refer the action taken by the Collector in building on a portion of it and in selling other portions to any other cause than the order of 11th May, 1858; and, viewing his action as in pursuance of that order, we cannot but hold the suit in respect of his land as barred by Section 20, Act IX. of 1859. The Lower Courts have not considered the admitted acts of the Collector in respect of this land, and consequently their decision regarding it is defective and open to amendment.

"Accordingly the claim of the plaintiff for possession of 1,800 yards of land, situated within the bounds specified in the plaint, and for Rs. 319, with interest from this date to the date of payment at Rs. 6 per cent. per annum, is decreed. The rest of the claim is dismissed. Costs in all the Courts will be payable by the defendant to the plaintiff in proportion to the value decreed, with interest at 6 per cent. We award no costs to the defendant as against the plaintiff, as the title of the latter to the whole property in suit has been held to be established, and he appears to have been willing to come to terms with the Government so long ago as 1861."

20. It will be observed that two points were very clearly laid down by the Court. The first (which is strongly opposed to the views of the local authorities) is that the order of 1858 extended only to the rights and interests of the zemindars, and was not meant to affect the rights and interests of others who were not zemindars. The second is that the demolition of a house for strategical purposes is no proof of a seizure in pursuance of confiscation.

21. The other three suits are closely connected with one another, in fact they refer to the same or portions of the same property; and the history of all these is clearly and succinctly given in the following extract from a letter from the Officiating Collector of Bareilly, dated 17th January last, on the subject of Nijabut Ally's suit:—

"Syud Asgurh Ally, father of Fyz Nubbee, whose representative plaintiff is, had a house and a small garden attached to it in Mohulla Nowmehla, and 30 beegahs and 5 biswas of cultivated land in Mouzah Mukrundpore, Pergunnah Crore.

"He died previous to the mutiny, leaving two sons, Fyz Nubbee and Massoom Nubbee, one daughter, and a widow named Oulia Begum.

"Mutation of names respecting the cultivated land were effected in favour of Massoom Nubbee alone, and the property stood in his name up to 1858, when the entire village of Mukrundpore was confiscated for the rebellion of the owners, the notorious Nowmehla Syuds, with the exception of the rights of one Syud Nujeef.

"The house was knocked down for strategical purposes, and the site attached and confiscated to Government.

"In 1855, a deed of mortgage appears to have been executed by Fyz Nubbee, mortgaging the house and garden to one Luchmun Doss. Subsequent to re-occupation, the mortgagee sued Government in the special Commission Court for recovery of his mortgage money. In reply it was pleaded that 'the house was not confiscated, but destroyed by order of the Commander-in-Chief for military purposes on the 11th May, 1858.'

"A second suit was brought against Government, but this time in the Civil Court, by Oulia Begum, claiming compensation for the house knocked down and for re-entry into the site thereof, on the plea that the property was given her in dowry. A waiver was put in that case by both her sons, and the claim has been decreed.

"The cultivated lands referred to above formed the subject of a third lawsuit. Luchmun Doss, who sued Government in the Special Commission Court, appears to have obtained a decree against Massoom Nubbee, the elder son of Asgurh Ally. In execution thereof the rights and interests of the judgment-debtor were put up to auction and purchased by Kúnhya Lall and Mudun Mohun. A caveat was entered in behalf of Government, but it was over-ruled. A suit was then formally brought and eventually carried up to the High Court in special appeal, but with no better result.

"From the above *resumé* it will be seen that what property the family ever owned in the village has been released. They had not a single yard more. Subsequently one Mohun Lall appeared on the stage, and in execution of a decree obtained by him against Fyz Nubbee, the *soi-disant* rights and interests of judgment-debtor in the very 30 beegahs and 5 biswas originally standing in Massoom Nubbee's name, which were previously sold in execution of Luchmun Doss's decree, were put up to auction and purchased by plaintiff. Subsequently he purchased privately a second plot from Fyz Nubbee.

"Government interfered, and a suit was brought by Nijabut Ally for recovery of the two plots. His claim has now been decreed to the extent of 2,100 yards, with proportionate costs.

"The Lower Court has held—

"'*1st.*—That as Government pleaded in the Special Commission Court that the house mortgaged by Fyz Nubbee was not confiscated, the statement *ipso facto* refutes the plea that any order of confiscation was ever passed against him, and that the claim is therefore not barred by limitation.

"'*2nd.*—That the lands claimed by plaintiff are distinct from, and are not comprised in the 30 beegahs and 5 biswas of cultivated land purchased by Kunhya Lall and Mudun Mohun in execution of Luchmun Doss's decree.

"'I would submit that the wording of the defence put in in the Special Commission Court cannot be construed in the way it has been. It simply means that the house was not knocked down in enforcement of any order of confiscation which would make it amenable to the jurisdiction of that Court, but for strategical purposes, and therefore not cognizable.

"'The plea, moreover, related to the site of the house and garden, and not to the lands in suit. The question as to whether the property was formally confiscated or not, is, I would contend, no longer open to discussion. Under the recent ruling of the High Court, if it were proved that the property in suit was attached and has been in possession of Government ever since, the Civil Courts were bound to negative all claims now brought to it as barred by efflux of time.

"'In the present instance the lands were so attached, and have been in possession of the State since 1858. The Moonsiff himself admits such possession,—*ergo* the limitation in Section 20, Act IX. of 1859, does apply.'

"'The second point has been decided simply on parol evidence, and that of plaintiff himself, the party most interested in the matter.

"In the old Haftganah papers not a single yard stands recorded in Fyz Nubbee's name. What the family ever owned has been released in full; and if Fyz Nubbee succeeded in selling lands to plaintiff which never belonged to him, he has his remedy against the vendor. No action can lie against Government."

22. The case of Oulia Begum was decided against Government by the Court of first instance, and the decision was upheld in appeal by the Judge. At the time that the result of these proceedings was made known to the Board, they had ascertained the issue of the special appeal in the suit of Mahomed Kyoom; and as it appeared with regard to Oulia Begum's property that no special order of confiscation had been passed, and that no actual seizure had taken place, it was considered that it would be idle to proceed further.

23. A brief account was given of the suit Government *versus* Luchmun Doss in paragraph 34 of the Report for 1868-69. The objection of Government to the sale of the property said to have been mortgaged to the defendant by a Syud of Mukrundpore having been over-ruled, a regular action was brought to set aside the sale, and recover the land. This action was dismissed by the Suburban Moonsiff, and an appeal to the Subordinate Judge of Bareilly was equally unsuccessful. Both Courts laid much stress upon the alleged facts that the Syud proprietor was not a rebel, and that his property had not been confiscated. As there was no finding or a very indistinct finding on the subject of possession, it was not unreasonably expected that the High Court, acting on the precedent of Mahomed Kyoom's suit, would on special appeal remand the case for further investigation of this important point. The result, however, was that the High Court dismissed the special appeal, affirming the decisions of the Lower Courts, with costs against the Government. The judgment of the Court was delivered in the following terms:—

"It is established that Massoom Nubbee was not a rebel, and that his property was not ordered to be confiscated. It does not, however, follow from this, that, under an order of confiscation of the property of other persons, the property of Massoom Nubbee may not *in fact* have been seized and held by the Government as property subject to confiscation. The case made by the plaintiff is that the whole village was confiscated and taken possession of by the Government (with an exception mentioned), and that Massoom Nubbee never afterwards obtained possession of the property belonging to him.

"There was evidence before the Court on this subject. The indistinct finding of the Courts respecting it, is the ground on which the present special appeal is based. It was clearly for the Government to establish that a case had arisen calling for the application of the very stringent provision of the law by which a brief limitation of one year is provided for suit by owners of property so seized to recover it. The Court of first instance thought that the possession of Government was not clearly and distinctly shewn, and it comments on the discrepancy of the evidence of the witnesses to prove possession. The Lower Appellate Court confirmed this judgment, but did not expressly find anything on the subject of possession taken by the Government. It held generally that there was no confiscation, and it relied on the Collector's written statement made in a suit in 1860, as showing that the Government Officers then at the suit of a mortgagee in the Special Commission Court put forward a bar to the jurisdiction in a shape which implied that, though an act of demolition by the troops might have taken place in 1860, nothing had occurred to give to this property the character of confiscated property. It was not unreasonable to infer that such a statement for such a purpose was inconsistent with the notion that the property had been seized and possessed by the Government as property which, whether taken with it or not, was at least in fact taken as forfeited. We think the judgment confirming that of the other Court may be taken as a sufficient finding against the plaintiff, and that the decree should be confirmed."

24. Hence it seems that failure in this case was chiefly due to want of proper care on the part of the local authorities, in placing before the Court of first instance

complete and reliable proof that the property was taken into the possession of Government and had so remained. The admission alleged to have been made by the Collector of Bareilly in the course of a suit in 1860, appears to call for further explanation. The facts are these:—Luchmun Doss held a mortgage on this property, and obtained a decree against the mortgagor prior to the mutiny. In 1858, the mortgagee brought an action in the Court of Special Commission against the Government as representative of the mortgagor by virtue of the confiscation. It was pleaded by Government that the house which formed part of the property had not been confiscated, but demolished for strategical purposes; and the Court of Special Commission, finding this established, dismissed the suit. Hence it was argued that Government was estopped from asserting now that the property was confiscated, and had been seized as such. There can be no doubt that this unfortunate admission influenced considerably the findings of the Civil Courts, who declined to accept the explanation of the Collector that the subject of litigation in 1860 was the house alone, and not the land on which it was situated; and that the latter was confiscated while the former was demolished by the army.

25. The fourth and last case (Nijabut Ally *versus* the Collector of Bareilly) is sufficiently explained in the Collector's letter of 17th January, 1870, an extract from which has been given above. The suit is still pending, an appeal having been preferred from the decision of the Lower Court on the basis of the arguments contained in Mr. Colvin's report.

Government *versus* Dodraj and others.

26. A contractor engaged to complete the metalling of five miles of the Buheree Road within a certain time under a penalty of Rs. 1,000. Money was advanced to him from the Government Treasury on the credit of two sureties. Within a few days of the expiration of the stipulated term, the Collector, finding that the work progressed slowly, gave the fifth mile to another party. More than three months after the expiration of the term only two miles had been completed. The contract was annulled; the work was valued; and the Collector directed the sale of hypothecated property for the balance of money advanced and not accounted for, and the whole penalty of Rs 1,000. An action was then brought by Dodraj and his sureties to obtain protection from the Collector's demand. They urged that the valuation was wrong, and that, as the fifth mile had been taken away from the contractor before the termination of the prescribed period, only a proportionate amount, (*viz.*, four-fifths) of the penalty should be exacted. The suit was dismissed. On appeal it was held by the Judge that the Collector's proceedings in directing on his own authority the sale of the hypothecated property were improper, and that he should have proceeded in the usual and regular way to sue for the balance due. The appeal was accordingly decreed. An action was then brought on the part of Government to recover the balance and the whole penalty with interest. The Principal Sudder Ameen decreed the claim in part; that is, he accepted a valuation of the work done at a higher rate than that put forward by Government; he disallowed interest; and he decided that, although by withdrawing the fifth mile, the Collector had annulled the contract, yet the defendants were bound to pay so much of the penalty as had been admitted by themselves to be due in the previous action—*viz.*, four-fifths of the whole amount, or Rs. 800. It was not thought necessary by the Commissioner to appeal against this decision, as the defendants were ascertained to be poor men with no means of satisfying a decree for a larger sum than had been awarded. The Board were not offered the option of giving their opinion in the matter, for the Commissioner's address only reached their office on the 24th July, 1868, and the term during which an appeal could have been made expired on the 25th idem. Litigation, however, did not stop here. One of the sureties appealed to the Judge, urging that the decision of the Lower Court was wrong, inasmuch as the penalty ought not to have been awarded when the Collector had himself annulled the contract. The Judge was of the same opinion. Entirely overlooking the fact that the contractor had proceeded with the remaining portion of the work for three months and more after

the withdrawal of the fifth mile, he held that the Collector's action amounted to a breach of the covenant with the contractor, and he proceeded to decree what was due to Government *minus* the whole of the penalty. This, however, was rectified by the High Court on special appeal. After a brief recital of the facts, the judgment proceeds—"It is certain that after the Collector's interference the work continued to be carried on by them. It is not suggested that any new contract was expressly made between themselves and the Collector for the remaining work, and the conduct both of the contractors and the surety subsequently, and especially in the litigation which afterwards occurred, shews that they regarded the contract to which they were originally parties as still in force. It has not been attempted to shew that the Collector's act increased the sureties' risk, or was calculated to impede the contractors in the due performance of the remaining work. The only view on which the judgment can be supported is that the original contract was brought to a close by the Collector's act, and that a new contract, express or implied, was substituted for it, which imposed no liability either on principals or surety for the penalty sued for. The Court has assigned the Collector's interference merely as the reason for the discharge both of surety and contractors. The fact of the continuance of the work without objection by either of them, and also their subsequent conduct, might well have been taken into consideration by the Court before it arrived at this conclusion." The decree of the Lower Court was then amended, and the liability of the surety to the full penalty of Rs. 1,000 declared.

Mackinnon *versus* Government.

27. This action (which will be more fully noticed when the terms of the compromise with the plaintiff have been reported and sanctioned), was brought to recover certain tracts of sâl forest, which were alleged by plaintiff to be part of the Attic Farm grant in the Dehra Doon assigned to him in 1862, but which, according to the views of the local officers, were from the first reserved as Government forest land. The suit was instituted in the Court of the Sudder Ameen and Assistant Superintendent of Dehra on the 23rd of January, 1869, but was subsequently removed to the High Court on the application of the plaintiff. Issues were fixed on the 24th August, 1869, and the interval has been employed in surveying and preparing maps of the disputed ground, and in settling the terms of the amicable adjustment, which will be communicated hereafter.

Rajah Kesho Sura Sahi, of Agoree Burhur, *versus* Government and others, defendants.

28. The suit noted in the margin was instituted by the plaintiff to annul the proceedings of the Settlement Department, which had been guided by the terms of a memorandum drawn up by Mr. E. A. Reade, Commissioner of Benares, under date 13th February, 1852, and transcribed below :—

"In Pergunnah Burhur the mehals noted below have been acknowledged by the Government to be the zemindaree of Rajah Rughonath Sahie, the Rajah of the pergunnah.

"But in these estates there are many claimants of the right of inferior proprietors founded upon long-continued possession, the enjoyment of privileges peculiar to village proprietors, and hereditary descent from those who originally reclaimed the land from waste and jungle.

"In consequence of exertions made by both parties, the Rajah on the one hand to be vested with absolute proprietary right over these estates and to treat these parties only as cultivators, and the latter on the other hand to render themselves wholly independent of the Rajah, much strife and ill-will has been excited, and the Rajah not only has difficulty in making collections, but the improvement of the country is retarded.

"The Rajah is undoubtedly the superior proprietor of these estates, but it is by no means clear that he has the absolute whole proprietary right which others claim in an inferior position ; and it must be borne in mind that his title was conferred by the Government with a reservation in favour of parties who might hereafter prove their right.

"Instead of litigation upon a difficult and doubtful point, it has been suggested both to the Rajah and the parties above-mentioned that an amicable adjustment would be preferable, which would be equitable to both and establish mutual confidence.

"The suggestion is that the settlements shall be made with parties in possession or entitled to possession and management for terms extending from 12 to 15 years, according to Mr. Roberts' judgment of the peculiar circumstances of the estate, at a fixed annual jumma calculated at 75 per cent. on assets, that is on the nikasee kham, after deducting *dey khurch* not exceeding 5 per cent.

"After the lapse of the term of the preceding settlement, a settlement for the same term shall again be made with the same parties or their heirs upon the same conditions. The average gross rental of the past settlement term shall be ascertained, and the new jumma be calculated on it at the rate of 75 per cent. on the nikasee kham, after deducting *dey khurch* not exceeding 5 per cent.

"The same principle of settlement shall obtain hereafter for similar terms and the same conditions.

"On occasion of a re-settlement, should a dispute arise between the Rajah and the village holders as to the amount of the new jumma, both parties shall agree to abide by an award of arbitrators, or, if either party object to arbitrators, of the Collector, subject to the appeal and final decision of the Commissioner, or other controlling authority."

29. The contention of the plaintiff was that the settlement proceedings were instituted without the consent of the Rajah, his father, and that they were opposed to the terms of the sunnud by which the exclusive proprietorship of the estate had been conferred upon his ancestors by Warren Hastings, and to the decisions of previous settlements in which the sole title of the Rajah had been recognized. It was further urged that the plaintiff, having been until recently under the charge of the Court of Wards, was not in a position to bring forward his claims at an earlier date, and that consequently the suit ought not to be barred by lapse of time. Thus the object of the plaint was to disturb the status of a number of sub-proprietors, who had enjoyed the advantages of a settlement for 16 or 17 years, and to recover from Government a considerable sum of money, representing the damage sustained by the Rajah in consequence of the arrangements made in 1852. Fortunately there was no danger of an adverse decision, for on the 9th September the Rajah, despairing, it may be presumed, of success, filed a petition in the Court of the Subordinate Judge of Mirzapore withdrawing his claim against Government. Had the case been prosecuted further, it was intended to reply, on behalf of Government, that the arrangements concluded in 1852 were accepted by the late Rajah; that the action was barred by limitation inasmuch as no objection had been urged during the late Rajah's life-time or within the period allowed by law, and that the disability of the minor to sue could not be held to affect the question of limitation, when his father, whose ability to sue was not denied, had omitted to do so.

Seth Dhunraj *versus* Major Hankin, 4th Bengal Cavalry, and Government.

30. This case (noted in paragraph 27 of the Report for 1868-69), was carried up in appeal before the High Court, who pronounced judgment on the 20th July, 1869. This decision was so far favourable that the suit as against Major Hankin was dismissed; but at the same time the plaintiff was permitted to take such further proceedings against that officer, or the regiment, or the individual members of the regiment, as, having regard to the character of the different items of the claim, it might be necessary for him to adopt. The judgment, which gives a full and interesting description of this complicated dispute, is transcribed at length below:—

"This suit was originally brought against Her Majesty's Secretary of State for India, to recover a sum of Rs. 41,442-15-1 which the plaintiff alleged he had advanced on the credit of Government; and the circumstances out of which the claim arose are briefly as follow.

"The 4th Bengal Cavalry is one of those regiments which have been raised in this country under conditions which differ from those under which the army is ordinarily recruited. The State provides pay and pensions, but leaves to the officers and troopers the supply of horses, arms, accoutrements, &c. The equipment, therefore, is the property not of the State, but of the regiment. In order to provide this equipment, funds are formed by deductions from the monthly pay, which are known as the Chunda Fund, the Wurdee Fund, &c.

"It appears to have been the practice that some native banker should attach himself to the regiment, occupying a position analogous to that of a pay agent. He received from the Treasury the regimental pay, made the necessary deductions for the funds and other authorized purposes, and delivered the balance to the pay duffadars, and acted generally as a banker to the regiment. He retained whatever sums were at the credit of the several funds, and, if necessary, made advances.

"In April, 1863, the business of the former banker of the 4th Bengal Cavalry was transferred to the plaintiff, and his appointment and its conditions were notified in the following document, which was signed by the Commanding Officer: —

"'Shadee Ram and Dhunraj, bankers.

"'You are allowed to open a bank in the 4th Regiment, and to transact business without hesitation.

"'It is herewith provided—

1.—"'That you will receive an interest of 1½ per cent.

2.—"'That you will receive monthly an interest 1½ per cent. on all bonds, uniform subscription, and every other expenditure in the regiment by deduction from instalments.

3.—"'The pay will be issued from the bank. Pay duffadars deducting the instalments, and giving a receipt for each troop, shall draw the pay and distribute it.

4.—"'As regards the money lent on bonds to persons going on leave, uniform subscription, half the interest shall first be deducted, and half of the interest shall be given when the pay is drawn for the period of leave.

5.—"'Bonds to bear my signature on the reverse.

6.—"'You will be furnished with a guard and a small tent for the bank, and bonds to be as follows:—

Horseman	...	...	Rs. 80	Instalment	Rs. 8
Bargheer	...	...	„ 30	Ditto	„ 3
Duffadar	...	...	„ 150	Ditto	„ 15
Kote Duffadar		...	„ 200	Ditto	„ 20

"'Do as ordered, and open your dealings with ease, without fear, and without apprehension of loss.'

"The plaintiff paid off a debt due by the regiment to the former banker, in respect of advances alleged to have been made on account of the several funds, which debt amounted, on the whole, to a sum of upwards of Rs. 20,000.

"In May, 1866, the plaintiff ceased to be the regimental banker, and he then made a claim for a very large sum of money in respect of principal and interest due to him on various accounts from the regimental funds and the members of the regiment. He claimed, among other items, a large sum as advances made in respect of the regimental pay. It appears from his statement that the Commanding Officer, for divers purposes, either drew sums in advance or obtained bills on out-stations, which advances and bills were deducted from the amount receivable as regimental pay, and that the plaintiff, by direction of the Commanding Officer, made up out of his own funds the deficiencies thus occasioned in the amount to be distributed to the regiment as pay. This account is termed the retrenchment account; and from the statement made by the present Commanding Officer, in answer to a question

put by us, it appears to be an account which is unknown in other regiments, and which presumably is an account which ought never to have existed.

"This was one of the largest items which the plaintiff claimed against the regiment. He claimed a further sum of considerable amount for advances made to the Chunda and Wurdee Funds, and interest on those advances.

"Further, a sum of Rs. 12,672-13-3 the plaintiff claimed on account of advances made to the members of the regiment, with the sanction of the Commanding Officer, in accordance with the terms of the document of the 3rd April; and another sum of Rs. 7,300-3-4 he claimed in respect of the principal and interest of advances made to the members of the regiment without the sanction of the Commanding Officer.

"There are some minor items in the claim made by the plaintiff, to which it is unnecessary that we should at present advert; and, besides these, there was a considerable sum claimed as overdrawn by the Commanding Officer on his private account.

"The plaintiff's claims formed the subject of a Court of Enquiry. Of the result at which that Court arrived, we have no information. The former Commanding Officer was removed, and Major Hankin appointed in his place. This gentleman appears to have set himself with diligence to the examination of the plaintiff's accounts. Having no regimental accounts from which he could obtain information (for those accounts were kept, if kept at all, by the late Commanding Officer), Major Hankin, with some competent persons, went through the plaintiff's books, and made extracts and called for and examined such vouchers as could be produced in support of the claims.

"A very large number of items being disputed, the whole claim, with the exception of that made in respect of the Commanding Officer's private account, was referred to arbitration. The terms of the agreement to refer which is expressed to be made between the plaintiff and Major Hankin, on behalf of the 4th Bengal Cavalry, are, so far as they are material, as follow:—

"'Whereas disputes and differences have arisen, and are subsisting between the parties above-mentioned (amongst others), as to whether certain sums have been properly debited by Seth Shadee Ram to the 4th Bengal Cavalry, whereas Major Hankin is of opinion they should be debited to Lieutenant-Colonel C. J. Curtis, or to other parties' private accounts, and in fact are not due to Seth Shadee Ram by the 4th Bengal Cavalry; it is hereby agreed by and between them to refer all disputes and differences whatsoever to the award, order and final determination of Mr. George Benson and Lalla Luchmee Narain.'

"The arbitration proceeded, and Mr. Benson drew up his award, by which he awarded to the plaintiff only the sum of Rs. 7,300-3-4, being the amount due in respect of the debts incurred by the members of the regiment without the sanction of the Commanding Officer; and in respect of three items of Rs. 12,672-13-3, the amount due on advances sanctioned by the Commanding Officer, Rs. 817-13-6, pay advanced to the regiment, and Rs. 27,952-15-1, regimental funds, he dismissed the claim as against the 4th Bengal Cavalry, but gave the plaintiff permission to sue any person whom he might be advised to sue but the Secretary of State in Council or Colonel Curtis. The rest of the claim he absolutely dismissed.

"We are obliged to express our opinion that this award was as bad as it could be. It dismissed, as against the regiment, the very items for which, if proved, the regimental funds were *primâ facie* liable; while it awarded a sum for which the regimental funds were clearly not liable. The item for sums advanced without the sanction of the Commanding Officer was not one that the Commanding Officer, as representing the regiment, was bound to satisfy, whatever may have been the plaintiff's rights as against the individual members of the regiment, to whom the advances had been severally made.

" On the other hand, it is manifest that, inasmuch as the plaintiff had, with the sanction of the Commanding Officer, and on the terms of the document of the 3rd of April, 1863, made the advances in respect of which he claims Rs. 12,672-13-3, he might fairly claim from the Commanding Officer that amount which it had been stipulated should be recouped to him by deductions at certain prescribed rates from the monthly pay of the several debtors, and which, moreover, it is not denied, had in fact been so recouped. So also with regard to whatever amounts might be due in respect of monies properly advanced to the several regimental funds. These amounts the plaintiff rightly claimed against the Officer Commanding the regiment, as representing the regiment; and if he could have established that they were in fact due to him, they should have been awarded to him. Mr. Benson, however, evidently fell into error, and awarded only that sum which could not, it appears to us, under any circumstances, have been claimed against the regiment. The second arbitrator agreed with Mr. Benson's award so far as it went, but, with greater consistency and a somewhat sounder knowledge of law, he proposed to award to the plaintiff the amount of the sanctioned advances. This difference between the arbitrators would, in pursuance of the agreement of reference, have been submitted to an umpire, when the plaintiff consented to accept Mr. Benson's award. This he alleges he did because Mr. Benson led him to believe that he had been in communication with the Government, and that the amount which Mr. Benson suggested he should claim against Government would be paid to him.

" And we must here express our opinion, that it would have been better if Mr. Benson had confined himself to his duties as Pleader, and not taken upon himself the office of arbitrator. Engaged on behalf of the regiment at a large fee, apparently at the same time offering advice and assistance to the officers representing the Government, it was almost impossible that he could have brought to the arbitration that perfect freedom from bias and prejudice which would have enabled him to pass a satisfactory decision on the questions referred. It is fair to Major Hankin to state that, before he proceeded to arbitration, he gave the plaintiff express notice that Mr. Benson had been engaged on behalf of the regiment, and at a large fee, and that the plaintiff did not object to the appointment of Mr. Benson, and consequently cannot complain of it. Major Hankin paid the plaintiff Rs. 7,300 in pursuance of the award; and the plaintiff then, in pursuance of the unfortunate suggestion made by Mr. Benson, instituted the present suit, originally only against the Secretary of State in Council, in the Court of the Sub-Judge of Bareilly, to recover the Rs. 41,442-15-1 which Mr. Benson seems to have considered might be due to him.

" The plaint is, as usual, so incorrectly framed that it is impossible to discover precisely the grounds on which the plaintiff asserts that the Secretary of State is liable to his claim. The plaint expresses that the claim is based on the document of the 3rd of April, two letters of Major Hankin, the unpaid Sowars' bonds, cheques signed by the late Commanding Officer, and on the award of the arbitrators; and after stating the plaintiff's appointment as banker, the holding of the Court of Enquiry and the arbitration, it avers that the suit is brought by the direction of the arbitrators.

" The Collector of Bareilly, through Mr. Benson, the Pleader, appeared on behalf of Government, and pleaded, among other pleas, that the Government was not liable to the claim, and issues were framed between the parties.

" The case was then called up by the Zillah Judge, who after hearing the argument of Mr. Benson, the quondam arbitrator, held that the Secretary of State was not liable, inasmuch as in a letter No. 446, dated 10th June, 1861, addressed by the Secretary to the Government of India to the Adjutant-General of the Army, and in a Circular Order, No. 112-9, dated 20th August, 1864, any such liability had been expressly disavowed. Here, then, so far as the Judge was concerned, the case ought

to have terminated; the plaintiff had endeavoured to fix the Secretary of State with a liability, and had failed to establish that any such liability attached to the defendant. But the Judge, instead of at once dismissing the suit, after he had decided that the only defendant before him was entitled to a decree, thereupon permitted the plaintiff to make Major Hankin a defendant, as agent for the regimental funds, and permitted (as he records in his judgment) the plaint to be amended.

"Unfortunately, the Judge's order on the plaintiff's petition, praying that Major Hankin should be made a defendant, is so illegible that we cannot decipher it. No summons appears to have been issued to Major Hankin. Possibly Mr. Benson accepted notice on his behalf, and waived the service of a summons; but of this we can obtain no certain information from the Pleaders in this Court. So also of the amended plaint we find no trace in the misl. An amended plaint introduces ordinarily fresh averments, and gives rise to fresh issues; but we can find no fresh issues drawn. Having erroneously allowed an entirely new suit to be brought, the Judge did not even then proceed, so far as we can ascertain from the misl, to try it according to law; and the result is such as, from the complicated nature of the claim, might have been expected. The Judge first held that the award was not a bar to the suit, on the ground that although the plaintiff's claim had by the arbitrators been dismissed as against the regiment, yet the plaintiff had a right to sue the regimental funds. Possibly the Judge arrived at this conclusion after ascertaining from Mr. Benson the nature of the claims with which, as arbitrator, he conceived he had had to deal. Indeed, as Mr. Benson had awarded only the sums for which the individual members of the corps were solely responsible, the Judge may have been right in holding that the claim against the members of the corps individually was all that the arbitrators assumed themselves empowered to decide.

"Having disposed of the preliminary question, the Judge proceeded to determine the claim; and here occurred the confusion which was to have been anticipated from the absence of issues; for while the Judge held that the evidence afforded by the plaintiff's books was corroborated sufficiently by other evidence to establish the correctness of the books in respect to a sum of upwards of Rs. 12,000 which was a part of the claim, he nevertheless dismissed the whole claim, on the ground that the books were not sufficiently corroborated.

"We cannot avoid expressing our opinion on this part of the decision that the accounts have not been investigated by the Judge with sufficient care, and that in respect of some portion of his claim the plaintiff had made out a *primâ facie* case. Nor ought the plaintiff to suffer because no regimental accounts can be produced. He endeavoured to procure the proceedings of the Court of Enquiry, and possibly among those proceedings the accounts rendered by the late Commanding Officer would have been found.

"It is, however, unnecessary for us to consider the case against Major Hankin on its merits, in the view which we take of the illegality of the proceedings of the Court of first instance. As we have already said, the Judge had no power, after he had virtually decided the suit, to permit the plaintiff to make a new defendant against whom he had a different cause of action; the plaintiff should have been referred to a new suit, and this is the course which in the present appeal we propose to adopt. We dismiss the present suit as against Major Hankin, but we allow the plaintiff to take such further proceedings against that officer, or the regiment, or the individual members of the regiment, as, having regard to the character of the different items of his claim, it may be necessary for him to adopt.

"The appeal raises again the question of the liability of the original defendant, the Secretary of State. The appellant's Pleaders have been urged to state to the Court the grounds on which they contend that the suit, as originally brought, is maintainable. They rely on the language of the award, and on the fact that the monies advanced, and which are the subject of the claim, were advanced to a

Government servant for public purposes. The award does not profess to give any such right of action ; nor, had it directly declared that the right of action subsisted, would its terms have bound the Secretary of State. Nor is the other argument, urged on behalf of the plaintiff, of greater weight ; for it by no means follows that, because a servant of Government borrows money and applies it to the purposes of Government, the lender can maintain a claim against Government. In this respect, there is no difference between the Government and a private individual. To make either responsible for the acts of its agent, proof must be afforded that the agent was acting within the scope of his authority. Not only is such proof wanting in the present instance, but the plaintiff from his connection with the regiment must have been aware of the peculiarity of its constitution, which negatived even the presumption of authority which might have arisen had the regiment been equipped by Government and not out of its own funds.

" We are therefore of opinion that against the original defendant the suit cannot be sustained, and in favour of this defendant we confirm the decree of the Court of first instance ; while, as against the other defendant, we so far modify the judgment and decree of the Court of first instance as to set aside its findings on the merits, and to give the plaintiff permission to take such further proceedings as are above mentioned."

Mussummat Mitna *versus* Tehseeldars of Soraon and Hundia, Allahabad.

31. This action arose out of the erroneous proceedings of the Revenue Court in refusing mutation of names when a *bonâ fide* transfer by sale had taken place. In August, 1868, the plaintiff sold certain estates and applied for the entry of the purchasers' names in the proprietary register. The transfer was, however, declined on the ground that the purchasers' possession had not been proved. Early in 1869, the purchasers absconded, and when the time arrived for the payment of the spring instalments of revenue, a demand was made upon the plaintiff for the balances, which she paid, and which she subsequently sued to recover. The mistake of the Revenue Court was corrected by the following instructions of the Commissioner of Allahabad under date 4th October, 1869 :—

" In this case Mitna, the vendor, was in possession when she sold her rights to Ajmere Singh, &c. She applied for mutation of names in the register of proprietors. This was, it appears, refused, not on the ground that sale had not taken place, or an objection by others that vendor was not in possession and could not therefore give possession, but on the ground that the vendees were not proved to be in possession. In this, if the case be properly reported, there has been error which should hereafter be corrected. If possession is subject of enquiry, it should be as to whether the vendor not the vendee was in possession. If possession is not objected to or found, mutation of names should on her certified application be made in the register of proprietors, whatever the manner of transfer."

32. In the meantime, however, it was necessary to defend the Tehseeldars, and this was done by pleading that they were only acting under orders, and that they were bound to observe the entries in the Malgoozaree Register. The action was decreed in favour of the plaintiff by the Moonsiff of Allahabad, who held that the mutation ought to have taken place ; that the parties to the sale did their utmost to effect the mutation ; that the Revenue Authorities were responsible for the consequences of their own error ; that the revenue was collected as a matter of fact from the wrong party ; and that the defendants who collected it were responsible for their action.

33. Against this decree an appeal has been preferred, and it has been urged that in the realization of the revenue no coercion was used ; that the plaintiff having omitted to appeal against the order of the Revenue Court may be held to have acquiesced therein ; and that the order of the Revenue Court having been issued, the defendants were bound to demand the revenue from the party whose name was borne upon the register.

34. The result of the appeal is not yet known; but the case is mentioned as showing the confusion which may arise from a careless or unintelligent interpretation of such simple rules as those relating to changes of names in the proprietary register.

Jodhraj and others, *versus* the Cantonment Magistrate of Morar on the part of Government.

35. This was a case of importance, as determining the position of Government in respect of the jurisdiction possessed by Military Courts of Requests. The plaintiffs had held a contract for the privilege of weighing all grain imported into the Sudder Bazaar of the Morar Cantonment. The Cantonment Magistrate considered that certain conditions of the agreement had been infringed and dissolved the contract. The contractors then brought an action against the Cantonment Magistrate on behalf of Government, and applied for a Special Court of Requests to try the case. The Military Authorities, however, ruled that a suit against the Cantonment Magistrate could not be entertained by the Court of Requests. An appeal was then brought before the High Court to contest this decision, and was dismissed with the following observations :—

"We are of opinion that the Act XI. of 1841 does not confer jurisdiction on the Court of Requests at Morar to entertain a suit against the Cantonment Magistrate as representing Government.

"The 2nd Section of the Act provides that actions of debt and other personal actions against native officers, soldiers and other persons amenable to the Articles of War for the Native Forces in the Military Service of the East India Company, *or residing within any station or Cantonment*, and carrying on any trade or business in a Military Bazaar, should be cognizable before a Military Court, and not elsewhere.

"The 17th Section provides for the entertainment of similar suits against the same persons in Military Cantonments which are beyond the frontier of the territories of the East India Company.

"Looking at the whole Act, we read it as providing for the trial of suits brought against persons subject to the Articles of War, and against suttlers, camp-followers and other persons who may *reside and carry on business* in a Military Bazaar, and who are subject to certain military regulations. In this sense the Government cannot be said to reside and carry on business in the Cantonment."

Government *versus* Seeta Ram and Ram Singh.

37. This was a simple case of breach of contract, but it may call for Departmental notice, as the loss sustained by Government appears to have been avoidable. The defendants engaged to convey logs of wood from Cawnpore to Newgong, and received a considerable sum of money in advance. They carted a few of the logs, but left the greater part lying on the road. Proceedings were first taken against them in the Criminal Court, but the prosecution was compromised on the defendants executing a fresh engagement. The second agreement also was broken, and the Executive Engineer of Newgong then proposed to sue defendants for the amount expended by Government in carting the abandoned logs to their destination.

38. A similar case against another contractor, Pirthee Singh, was dropped because the receipt did not show whether payments had been made by Government or by any one else. In short, as described by the Executive Engineer, the document was "simply a receipted acknowledgment of Rs. 110 for carting 5 logs." There was no entry of payment to the contractor in the cash-book, and the transaction was justly styled "a most irregular one between the Sub-Overseer and contractor." It is presumed that the personal responsibility of the negligent Sub-Overseer has been enforced as recommended by the Executive Engineer.

However, it was determined to proceed with the action against Seeta Ram and Ram Singh. The suit would have been brought in Cawnpore, where the cause of action

arose; but before the necessary documents had been prepared it was brought to the Board's notice that both the parties were paupers, and that there was no hope of recovering the claim if decreed. Under the circumstances, the Commissioner of Allahabad was told that the action must be dropped. Here, then, a fair claim of Government was lost because the contractors whom the Department of Public Works employed were men of straw, from whom, in the event of failure, not a rupee could be realized. As reported by the Collector of Cawnpore, one had died without leaving any property, and the other possessed no property himself, but had a share in a house and bagh, provided that his father left it to him. Such were the men to whom an advance of Rs. 1,452 was made.

39. As regards punctuality and attention to rules in the submission of papers relating to suits, the Board have every reason to be satisfied with the conduct of local officers. There have, fortunately, been no instances in which a case was lost to Government through avoidable delays. From Bareilly, it is true, references were occasionally made to the Board so late that no orders could be passed before the cases came on for hearing. But on enquiry it has been found that the delays were attributable to the Collector not having received timely notice of the proceedings from the Civil Court. The Board are now awaiting a further report from the Commissioner on the subject; and, if it shall appear necessary, Government will be addressed hereafter. It is obvious, however, that, to enable the Board to exercise an effective control over the proceedings of their subordinates, it is necessary that dates for the hearing of cases in which Government is concerned should be fixed at sufficiently long intervals to admit of reports being submitted and orders passed through the usual channels.

40. In conclusion, the Board would commend to the favourable notice of the Hon'ble the Lieutenant-Governor the valuable services rendered by Mr. Jardine, the Government Advocate, and Baboo Peyaree Mohun, the Government Pleader. The very favourable result of the litigation which has taken place in the High Court during the year under review (83 per cent. in favour of Government) is the most satisfactory proof possible of the very great carefulness and ability which those gentlemen have brought to the service of Government.

I have the honour to be,
Sir,
Your most obedient servant,
F. HENVEY,
Offg. Secretary.

ORDERS OF GOVERNMENT.

No. 1325A. OF 1870.

FROM

C. A. ELLIOTT, ESQ.,

Offg. Secy. to Govt., N.-W. Provinces,

TO

F. HENVEY, ESQ.,

Offg. Secy., Board of Revenue, N.-W. Provinces.

DATED NYNEE TAL, THE 6TH OCTOBER, 1870.

SIR,

I HAVE received and laid before His Honor the Lieutenant-Governor the Report by the Board of Revenue, in their capacity of Legal Remembrancers, for the year 1869-70, submitted with your No. 918, dated 17th August.

2. The reports from all divisions, except Meerut and Benares,
Para. 2. were later in arrival than they should have been, and the delay in the submission of the Allahabad Divisional Return is especially unsatisfactory. There is no reason why such delays should occur, since the preparation of the statements is very simple.

3. The decrease in litigation which was observable last year still
Para. 4. goes on, the total number of suits having fallen from 279 to 218. Excluding miscellaneous cases, the number of suits instituted this year in which Government was a party was 117, against 156 in the preceding year.

4. This diminution in the number of suits cannot, as the Board observe, be taken to represent increased care in instituting or defending cases on the part of Government. On the contrary, in no year since 1865 has Government been so unsuccessful in litigation, and this comparative ill-success runs through all classes of suits, the only exception being that in 1866-67 the suits in which Government was plaintiff showed greater ill-success. The general result is given in Statement C., from which it appears that in every hundred suits Government has lost forty.

5. It appears, however, from Statement B., that the loss of suits cannot in all cases be held to be discreditable to Government officers. There is a large class of suits brought against "wards' estates" for debts incurred in the lifetime of the ward's predecessor. In these cases the Government officers, who manage the estates, are sued by the creditors, but the suit is frequently met by a confession of judgment. Cases of this kind should be excluded from the general considerations as to the success or failure of Government in litigation.

6. The divisions in which Government suits have been most un-
Para 8. successful are Meerut and Rohilkhund, and there, out of thirty-eight cases lost, eighteen were cases connected with costs, that is, for the most part applications for execution of decrees against Government, and

in which the speedy satisfaction of the decree would have obviated the necessity for further litigation. The excessive number of these suits has been specially noticed by the Lieutenant-Governor, and I am to state that Collectors, through whose fault Government has to pay extra costs in such cases, should be warned in future of their personal responsibility for loss to Government in this respect.

7. On the other hand, the Commissioners of Agra, Allahabad, and Benares deserve praise for their care in not allowing applications for execution of decrees to go into Court. In these three divisions there was not a single case of this kind.

8. His Honor concurs with the Board in holding that the unfavour-
Para. 9. able issue in the five suits relating to Crown lands and escheats in the Meerut Division implies a want of completeness in enquiring, and accuracy in reporting, the facts of the case on the part of Collectors.

9. The Lieutenant-Governor agrees with the Board's remark (paragraph 12) that the figures given in Statement A. as to regular appeals tend to show that there is too great readiness on the part of Collectors to appeal against the decrees of the Court of First Instance, and the results under this head are unfavourable. On the other hand, the success of Government in special appeals is very marked, and is no doubt rightly attributed to the aid of skilled European advice, the effect of which is that weak cases are not brought forward, and the appeals which are lodged are ably argued.

10. The net cost incurred by Government during the year was Rs. 4,866-10-6, as detailed on the margin, leaving a balance due of Rs. 8,868-10-7, *viz.*, for past years Rs. 3,930-1-5, and Rs. 4,938-9-2 during 1869-70.

Para 15.

		Rs	As	P.
Gross cost, ...		12,166	11	5
Recovered for costs incurred during the year,	Rs. 2,370 10 9			
Ditto past years,	„ 4,929 6 3			
		7,300	1	0
Net ...	Rs.	4,866	10	5

11. In recoveries of costs incurred during this year, the divisions stand in the following order :—

(1) Allahabad.
(2) Benares.
(3) Meerut.
(4) Rohilkhund.
(5) Agra.

In the latter division, only Rs. 7-4-0 was recovered.

12. The recoveries of old claims have been good everywhere, but especially so in the Rohilkhund and Benares Divisions.

13. The Board will do well to invite the attention of District Officers to the clearing off of these balances, which should, as a rule, be either collected or written of as irrecoverable.

14. The notes on the more important cases have been read by the Lieutenant-Governor with interest. They relate to eleven suits. Four of these turn on a technical issue as to the effects of an order of confiscation passed in 1858; two refer to breaches of contracts for making roads and conveyance of timber; one case turns on the discretion exercised by two tehseeldars in registering a transfer which they believed to be

fraudulent; in another it is ruled that a Cantonment Magistrate is not amenable to a Court of Requests in respect of a complaint for breach of contract; two were compromised. The last involves a special issue as to the relations between the Commanding Officer and the banker of a Cavalry Regiment. This case and some of the others might, perhaps, have been related with less detail.

15. It is satisfactory to notice that in none of these important suits is discredit to be imputed to any of the Executive Officers concerned, except, perhaps, in so far as the tehseeldars of the Allahabad District may have slightly misunderstood their duty of enquiring into the reality of a transfer which they suspected, not apparently without reason, of being made with a fraudulent intention.

16. In the conduct of all other cases cited by the Board, the District Officers seem to have shown soundness of judgment and a good knowledge of law. From this it is concluded that the cases in which Government has been cast, through the laches or mistakes of its officers, have been in the main unimportant or miscellaneous cases, to which their full attention, through the press of business, was not given.

17. This removes the chief stain of discredit which might seem, from the figures in Table A., to rest on the Civil Administration. But not the less should District Officers be warned, and the Board should take the opportunity of pointing out, that such suits, though not perhaps of great moment as respects Government, do nevertheless often involve important issues for individuals, and loss both of money and prestige to Government.

18. In conclusion, I am desired to convey an expression of the Lieutenant-Governor's sense of the valuable services rendered by Mr. W. Jardine, the Government Advocate, and to add that His Honor has noticed with satisfaction the favourable mention made of the Government Pleader, Baboo Pearee Mohun Banerjee.

19. I am further to convey the Lieutenant-Governor's thanks for the ability and assiduity with which the Board have carried out their duties as Legal Remembrancers to Government during the past year.

I have the honour to be,

SIR,

Your most obedient Servant,

C. A. ELLIOTT,

Offg. Secy. to Govt., N.-W. P.